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Appeal from Circuit Court, Frederick County.

Action by the Scottish Union, etc., Insurance Company and others against the City of Winchester. Decree of dismissal, and plaintiffs appeal. Affirmed.

Barton & Boyd, for appellants.

R. Gray Williams, for appellee.

PHENIX INS. CO. *v.* SHERMAN.

Nov. 18, 1909.

[66 S. E. 81.]

1. Insurance (§ 355*)—Iron-Safe Clause—Compliance.—Under the iron-safe clause, the insurer has a right to such a compliance with its terms as will inform him during the life of the policy fairly as to the stock carried by the insured, and, in case of loss by fire, as to the stock burned and the fair cash value thereof.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 85.]

2. Insurance (§ 335*)—Stock of Goods—Inventory—Sufficiency.—Under an iron-safe clause requiring the keeping of a complete itemized inventory, an inventory which lumps bills of goods without setting out the items or their quality, or the stock thereof, is insufficient, especially where two inventories, which more nearly complied with the clause, had been started and never completed, but destroyed, and the books as kept were not sufficient within the clause.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 85.]

3. Insurance (§ 335*)—Stock of Goods—Set of Books—Sufficiency.—Under an iron-safe clause requiring insured to keep a set of books which will plainly present a complete record of the business transacted of purchases, sales, shipments, both for cash and credit, where insured, conducting a large business and making sales daily for both cash and credit does not in his books make entries indicating what the cash received was for, and mingles the proceeds of the credit sales with the proceeds of the cash sales, and the insured, relying on his cash book, the entries of which were alleged to have been made after daily sales, is unable to explain intelligently what business he had transacted or what goods were in the store and destroyed by the fire, and a destroyed ledger from which it was claimed some of the cash book entries were taken failed to show the date of the entries, and the cash book was so written up that

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.

it might have been written after the fire, the books were not sufficient within the policy, even as a substantial compliance therewith.

[Ed. Note.—For other cases, see Insurance, Cent. Dig. § 853; Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 85.]

4. Insurance (§ 335*)—Stock of Goods—Iron-Safe Clause—Books.—An iron-safe clause gave insured the choice of relying on an inventory taken within 12 months prior to the date of the policy or to take one within 30 days thereafter, and required him to keep a set of books from date of inventory during the life of the policy. At the trial of the action on the policy, insured relied on an inventory taken more than four months prior to the date of the policy. Held, that insured was bound to keep books after the inventory relied on at the trial.

[Ed. Note.—For other cases, see Insurance, Dec. Dig. § 335.* 6 Va.-W. Va. Enc. Dig. 85.]

Error to Circuit Court, Wise County.

Action by J. B. Sherman against the Phoenix Insurance Company on an insurance policy. From a judgment entered after overruling a demurrer to the evidence for plaintiff, defendant brings error. Reversed.

Phlegar & Powell and *Irvine Morison*, for plaintiff in error.

Bullitt & Chalkley and *Ayers & Fulton*, for defendant in error.

NATIONAL CAR ADVERTISING CO. v. LOUISVILLE &
N. R. CO.

Nov. 18, 1909.

[66 S. E. 88.]

1. Corporations (§ 370*)—Powers—Contracts—Ultra Vires.—While, in determining whether a contract by a corporation is ultra vires, power fairly implied in the charter is as fully granted as that which is expressed, the charter remains the measure of the corporate powers, and the enumeration of the powers implies the exclusion of all others.

[Ed. Note.—For other cases, see Corporations, Cent. Dig. § 1515; Dec. Dig. § 370.* 3 Va.-W. Va. Enc. Dig. 574.]

2. Railroads (§ 18*)—Powers—Implied Powers—Contracts—Ultra Vires—Advertising.—A railroad charter for the general purpose of transporting people, merchandise, and property had no implied power to make a contract granting the exclusive right of displaying advertisements on its box cars.

*For other cases see same topic and section NUMBER in Dec. and Am. Digs. 1907 to date, and Reporter Indexes.